



Comptroller General
of the United States

Washington, D.C. 20548

137149

Decision

Matter of: James A. Stempeck and Kathleen D. Stempeck

File: B-252670

Date: September 15, 1993

DIGEST

Claimant and his wife, both federal employees with the same agency, were both transferred in the interest of the government to the same new duty station. The travel orders authorized relocation expenses for the claimant, with his wife shown as a dependent. The wife purchased a residence solely in her name at the new station, and a few weeks thereafter they executed a formal separation agreement. Claimant is not entitled to reimbursement of the real estate purchase expenses since he did not pay such expenses and since the parties were in the process of separating at the time of settlement of the purchase. However, since his wife took title to the new residence in her own name and paid all the purchase expenses, she may be reimbursed for the allowable expenses of the purchase.

DECISION

This decision is in response to a request by a disbursing officer whether payment may be made on the claim of an employee of the Department of the Navy for reimbursement of real estate expenses incurred in the purchase of a residence at his new duty station.¹

BACKGROUND

James A. Stempeck and his wife, Kathleen D. Stempeck, both employees of the Navy Research Laboratory, were transferred from Warminster, Pennsylvania, to Colorado Springs, Colorado, on the same date, February 27, 1989. Although either employee was eligible to be issued travel orders, under then existing regulations the travel orders were issued to Mr. Stempeck with Kathleen Stempeck and their

¹The claim was submitted to our Claims Group as a doubtful claim by the Deputy Director, General Accounting and Payments, Defense Finance and Accounting Service Center, Columbus, Ohio.

child listed as dependents. These orders included authorization for reimbursement of real estate purchase expenses at the new station.

On November 30, 1989, a house was purchased in Colorado Springs solely in the name of the wife, Kathleen D. Stempeck, and on December 19, 1989, approximately 3 weeks later, the Stempecks executed a separation agreement, stating that they had separated and indicating their desire to "confirm their separation" and make arrangements in connection therewith, including the settlement of all questions relating to their property rights. The agreement specifically noted that Mrs. Stempeck had recently purchased a residence, that Mr. Stempeck was planning to do the same, that each would hold title in his or her sole name and be solely responsible for the expenses related to his or her property, and that neither claimed any right in the other's property. Subsequently they divorced, which became final on August 28, 1990.

Mr. Stempeck filed a claim with the agency for reimbursement of the expenses related to the purchase of the residence that Kathleen Stempeck had purchased. In a letter dated April 20, 1992, to the disbursing officer, he stated as follows in support of his claim:

"The house was purchased in November 89 in Kathleen's (spouse at the time) name. I resided there for a matter of only days, while we tried to resolve a separation. As unfortunate circumstances happened, she stayed in the house and I left. The separation and eventual divorce did not take place until later. Regarding payment, our finances were still intermingled... I do not know how to show I contributed to the house singly.

"Kathleen is also an NRL employee stationed at the same location, the National Test Bed. I did not use the house reimbursement benefit for myself, but am trying, instead, to transfer the benefit to my former spouse."

The Department of the Navy submitted the claim here in light of doubt as to Mr. Stempeck's entitlement to reimbursement since the residence is titled in the wife's name, she apparently paid the purchase expenses and Mr. Stempeck resided there only briefly.

ANALYSIS

Pursuant to 5 U.S.C. § 5724a(a)(4) (1988), a transferred employee may be reimbursed for the expenses "required to be paid by him" in the purchase of a residence at the new

official station. The statute authorizes reimbursement whether title to the residence is in the name of the employee alone, in the joint names of the employee and a member of his immediate family, or in the name of a member of his immediate family alone. For the purposes of relocation allowances generally, the implementing regulations, found in the Federal Travel Regulation (FTR), define members of the employee's immediate family as specified relatives, including his spouse, who are members of the employee's "household" at the time he reports for duty at the new duty station. FTR, 41 C.F.R. §§ 302-6.1(c), and 302-1.4(f).

While Mr. Stempeck's former wife met the definition of being a member of his immediate family at the time he reported for duty in Colorado, since she was then a member of his "household," we have held that this definition must be examined in connection with the other statutory and regulatory provisions which provide that the employee must have been required to pay the real estate expenses for which he seeks reimbursement. Since expenses in a real estate transaction are generally paid at settlement, we have held that the date of settlement is the appropriate date to use in determining whether title to the real estate is held by a party who meets the regulatory requirements discussed above. See Alan Wood, 64 Comp. Gen. 299 (1985).

In this case it appears that at the time of the purchase of the residence, the Stempecks were contemplating separation and Mr. Stempeck, although he stayed in the house a few days, apparently never established his residence there. Further, Mrs. Stempeck's name was the sole name on the settlement sheet and on the deed to the property, and it appears that she paid the expenses incurred in the purchase. It is in recognition of these facts, apparently, that Mr. Stempeck seeks to claim the reimbursement for Mrs. Stempeck rather than himself.² Since it does not appear that Mr. Stempeck was required to pay the purchase expenses nor that the house was his residence, we do not believe it would be appropriate to reimburse him for those expenses.

We understand, however, that both of the Stempecks were transferred in the interest of the government, and the manner in which the travel orders were issued to Mr. Stempeck with Mrs. Stempeck as a dependent, was in keeping with the provisions of the then existing provisions of FTR § 302-1.8. That provision stated that when two

²Although Mr. Stempeck has purchased a residence for himself, he is not seeking reimbursement of those purchase expenses which in any event occurred beyond the 3-year allowable period for reimbursement.

employees who are members of the same immediate family are transferred together, as were the Stempecks, the relocation allowances apply only to one family member, with the other eligible as a dependent only. We have recognized that the purpose of this provision was to preclude duplicate payments for the same purposes incident to what is essentially a single relocation.³ See Robert J. Sheaf, 57 Comp. Gen. 389, 391 (1978). It was on that basis, as noted above, that the Stempecks' travel orders were issued.

In these circumstances, since Mrs. Stempeck purchased the residence in question, and her name is the sole name on the settlement sheet and the deed to the property, it appears appropriate to reimburse her for the real estate expenses. Since Mr. Stempeck is not claiming such expenses for himself, there is no question of providing duplicate benefits.⁴ Accordingly, Mrs. Stempeck may be reimbursed the allowable expenses she incurred in purchasing the residence in question.

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³Effective September 17, 1991, FTR § 302-1.8 was amended to allow employee members of the same immediate family, to receive separate, non-duplicative, relocation benefits. Amendment 20, 56 Fed. Reg. 46,988 Sept. 17, 1991.

⁴Compare Michael L. Wineman and Kimberly L. Butterworth, B-249457, Mar. 31, 1993.